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CASES AND REGULATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 26

WILLIAM L. GRIFFIN, ET AL., PETITIONERS

v.

STATE OF MARYLAND

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland (R. 76–83) is reported at 225 Md. 422, 171 A. 2d 717. The opinion of the Circuit Court for Montgomery County (R. 72–75) is not reported.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on June 8, 1961 (R. 76). The petition for a writ of certiorari was granted on June 25, 1962 (370 U.S. 935; R. 84). The jurisdiction of this Court rests upon 28 U.S.C. 1257(3).

QUESTION PRESENTED

Petitioners were arrested and convicted for trespass because of a refusal to leave a private amusement park which pursued a policy of racial discrimination. The direction to leave the premises was issued, and the arrest was made, by an officer in the employ of the proprietor and clothed with the authority of the State as a Special Deputy Sheriff.

The question presented is whether, in the circumstances, the State was so closely identified with the act of discrimination that the conviction should be set aside as involving a denial of equal protection of the law in violation of the Fourteenth Amendment.

INTEREST OF THE UNITED STATES

This case has been set down for argument with a number of other cases involving so-called "sit-in" demonstrations. Like the other cases, it involves the rights of Negroes subjected to racial discrimination by private businesses open to the public—a matter of grave concern to the polity of the Nation. See the brief of the United States in Nos. 11, 58, 66, 67, and 71. Because the circumstances differ, however, we are filing a separate brief *amicus curiae* in this case. In obedience to the precept that the Court ought not reach broad constitutional questions if there is a narrower ground of decision, our argument herein is confined to the question set forth immediately above.

STATEMENT

A. STATUTE INVOLVED

Petitioners were convicted of violating Article 27, Section 577, of the Maryland Code (1957) which provides:

> Any person * * * who shall enter upon or cross over the land, premises or private property of any person * * * after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor * * * provided [however] that nothing in this section shall be construed to include within its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being the intention of this section only to prohibit any wanton trespass upon the private land of others.

B. THE FACTS

This case involves a "sit-in" demonstration at Glen Echo Amusement Park in Montgomery County, Maryland. On June 30, 1960, petitioners, young Negro students, entered the Park through the main gates (R. 6–7; 59). No tickets of admission were required for entry (R. 17[1]). Petitioners, with valid tickets that had been purchased for them by white supporters, took seats on the carousel (R. 7–8; 17; 59–60). The carousel was not put in operation and petitioners were approached by one Francis J. Collins (R. 8–9; 61).

[1] Tickets are purchased at individual concessions within the Park (R. 17).

Collins was employed by the Glen Echo management as a "special policeman" under arrangements with the National Detective Agency. At the request of the Park management, Collins had been deputized as a Special Deputy Sheriff of Montgomery County (R. 14–15). He was dressed in the uniform of the National Detective Agency and was wearing his Montgomery County Special Deputy Sheriff's badge (R. 14). Collins directed petitioners to leave the Park within five minutes, explaining that it was "the policy of the park not to have colored people on the rides or in the park" (R. 7–8). Petitioners declined to obey Collins' direction and remained on the carousel for which they tendered tickets of admission (R. 8, 17). Collins then arrested petitioners for trespass in violation of Article 27, Section 577, of the Maryland Code (R. 12).

Collins took this action under the instructions of his employer. He testified that, after seeing the students on the rides, he "went up to Mr. Woronoff [the Park manager] and asked him what he wanted me to do. He said they were trespassing and he wanted them arrested for trespassing, if they didn't get off the property" (R. 7). Mr. Woronoff testified that he "instructed Lieutenant Collins to notify them that they were not welcome in the park, and we didn't want them there, and to ask them to leave, and if they refused to leave, within a reasonable length of time, then they were to be arrested for trespass" (R. 54).

At the Montgomery County Police precinct house, where petitioners were taken after their arrest, Collins preferred sworn charges for trespass against petition-

ers by executing an "Application for Warrant by Police Officer" (R.A., 12). Upon Collins' charge, a "State Warrant" was issued by the Justice of the Peace (R. 13).[2] Petitioners were tried in the Circuit Court of Mongomery County on September 12, 1960.

At petitioners' trial, Glen Echo co-owner Abram Baker described his directions to Collins in these words (R. 36):

> Q. And what specific instructions did you give him with respect to authority to order people off the park premises?
>
> A. Well, he was supposed to stop them at the gate and tell them that they are not allowed; and if they came in, within a certain time, five or ten minutes—whatever he thinks, why he would escort them out.
>
> Q. In the event they didn't see fit to leave at his warning, did you authorize Lieutenant Collins to have these people arrested?
>
> A. Yes.
>
> Q. On a charge of trespass?
>
> A. On a charge of trespass.

Baker also testified (R. 39–40):

> Q. Would you tell the Court what you told Lieutenant Collins relating to the racial policies of the Glen Echo Park?
>
> A. We didn't allow negroes and in his discretion, if anything happened, in any way, he

[2] The original State Warrant, filed on August 4, 1960 (R.B.), alleged that petitioners had refused to leave the Park "after having been told by the Deputy Sheriff for Glen Echo Park" to leave the property. This was replaced by an amended State Warrant of September 12, 1960 (R.C.) which alleged that petitioners had refused to leave "after having been duly notified by an agent of Kebar, Inc." not to remain on the property.

was supposed to arrest them if they went on our property.

Q. Did you specify to him what he was supposed to arrest them for?

A. For trespassing.

Q. You used that word to him?

A. Yes; that is right.

Q. And you used the word "discretion"—what did you mean by that?

A. To give them a chance to walk off; if they wanted to.

Q. Did you instruct Lieutenant Collins to arrest all negroes who came on the property, if they did not leave?

A. Yes.

Q. That was your instructions?

A. Yes.

Q. And did you instruct him to arrest them because they were negroes?

A. Yes.

Q. Did you instruct him to arrest white persons who came on the park property with colored persons?

A. If they were doing something wrong, they are supposed to be arrested.

Q. In other words, your instructions as to negroes was to arrest them if they came into the park, and refused to leave, because they were negroes; and your instruction was to arrest white persons if they were doing something wrong?

A. That is right.

Park Manager Woronoff testified that he was responsible for the conduct of Glen Echo's special police force (R. 54). He stated (R. 55):

> Q. Mr. Woronoff, you said, as General Manager of the Park, you were responsible for the conduct of the National Detective Agency officers; is that right?
>
> A. Yes; while they are in our employ at the park.
>
> Q. Does the National Detective Agency make their employees available to you, and you direct them as you see fit?
>
> A. That is correct.

Petitioners were convicted of wanton trespass and ordered to pay a fine (R.F., 72–75). The convictions were affirmed by the Maryland Court of Appeals which rejected petitioners' arguments regarding the applicability of the Maryland statute and found that petitioners' arrest by officer Collins in his dual capacity as agent of Glen Echo and Deputy Sheriff of Montgomery County did not violate the Fourteenth Amendment. On the latter issue, the court said (R. 81–82):

> It is true, of course, that the park officer—in addition to being an employee of the detective agency then under contract to protect and enforce among other things, the lawful racial segregation policy of the operator of the amusement park—was also a special deputy sheriff, but that dual capacity did not alter his status as an agent or employee of the operator

> of the park. As a special deputy sheriff, though he was appointed by the county sheriff on the application of the operator of the park "for duty in connection with the property" of such operator, he was paid wholly by the person on whose account the appointment was made and his power and authority as a special deputy was limited to the area of the amusement park.
>
> * * * * *
>
> It follows—since the offense for which these appellants were arrested was a misdemeanor committed in the presence of the park officer who had a right to arrest them, either in his private capacity as an agent or employee of the operator of the park or in his limited capacity as a special deputy sheriff in the amusement park (see Kauffman, *The Law of Arrest in Maryland,* 5 Md. L. Rev. 125, 149)—the arrest of these appellants for a criminal trespass in this manner was no more than if a regular police officer had been called upon to make the arrest for a crime committed in his presence * * *.

ARGUMENT

We submit that the convictions should be reversed.

We base this conclusion squarely upon the proposition that when a State delegates its police power to a private business firm the State is responsible under the Fourteenth Amendment for the way in which the private firm exercises the delegated power. Here the police power of Maryland was delegated to Collins, an employee of the Glen Echo Amusement Park, who was paid by the Park, acted for its benefit and was subject to its direction. Clothed with the State's

police power, the proprietors of Glen Echo, acting through Collins, used the police power to enforce a policy of racial segregation. Had the State confined its police authority to law officers acting independently as public officials, the arrests might or might not have been made; but, in either event, the State would be intervening for the first time after the decision to treat petitioners as trespassers had been made and its action, whatever the ultimate effect, might then have been viewed as color-blind. We pass the question whether arrest and prosecution, under such circumstances, would violate the Fourteenth Amendment because, here, the State surrendered its independence of judgment to a private firm and put it into that firm's power to use the State's authority much as it pleased in support of the firm's policies of racial discrimination. Our position is simply that when the decision to segregate and the decision to exercise the delegated police power are joined in the same private hands, the State cannot deny responsibility for either.

1. The attempted eviction of petitioners, their arrests, and the institution of the prosecution were acts of the State of Maryland because Collins, the Park policeman who took these steps, was acting as a public officer of the State of Maryland. See *Williams* v. *United States*, 341 U.S. 97; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 331 U.S. 416, 429. Collins was in uniform and wearing an official badge when he directed petitioners to leave the amusement park. Collins made the arrests as an officer exercising State police power. Whether a private citizen could have requested petitioners to

leave and made the arrests is irrelevant. It was Collins who took the action, and he was acting within the scope of his official duties.

2. Simultaneously Collins was acting as an employee and under the direction of the Park. It was Woronoff, the Park's manager, to whom Collins turned for guidance when petitioners were seen on the carousel. It was on Woronoff's orders that petitioners were arrested. Collins was paid by the Park. It was to the Park, therefore, that he owed his primary loyalty and the Park's interests and wishes would naturally guide him in situations where public officers might exercise discretion.

It is no answer to say that since the Park might have requested petitioners to leave and then summoned police officers from a neighboring police station, Collins' action was no different than any police officer might have taken. There are worlds of difference, in both principle and practice, between State officers who are impartial public servants, obedient only to the law and safeguarding only the public interest, and private policemen paid to do the bidding of private masters in pursuit of their private interests. The essential difference in loyalties and points of view has many practical consequences but there is no better example than the history of industrial relations. For several decades large employers subsidized private detectives and other deputies armed with the authority of the State to execute the employers' wishes during campaigns for union organization, strikes and labor disputes. The conduct of these private policemen is notably different from the conduct of municipal or

State police during labor disputes in subsequent decades. Of the former it was said, "As a class they are overzealous, through their desire to prove to the detective bureaus that they are efficient, and to the railway company that they are indispensable." Frankfurter and Greene, *The Labor Injunction*, p. 72, quoting Judge Amidon in *Great Northern Ry. Co.* v. *Brosseau*, 286 Fed. 414, 416. See also, *id.*, at pp. 120–121. In recent years State and municipal police forces have found very different ways of preserving the peace, protecting private property and enforcing legal obligations:

Quite different ways of dealing with petitioners' protests against the Park's discriminatory practices might well have been followed if the sovereign authority of Maryland and the duty of serving the interests of his private employer had not been combined in the person of Special Officer Collins. As a practical matter, State and municipal police authorities have and exercise wide discretion in dealing with petty criminal offenses that are essentially private quarrels, especially where public intervention is likely to involve the government in controversial questions essentially unrelated to the preservation of peace and order. It is for the public officials to determine when to resort to arrest, and when to leave the owner to private remedies. The police may file a criminal complaint or they may refuse and insist that any complaint be filed by the interested party. Collins, however, did not seek the guidance of public officials, and the police authority of Maryland was brought to bear without independent public judgment. Had Collins consulted a State or municipal official, a different solution to the "sit-in"

problem might have followed. Collins might have been advised to attempt to conciliate the parties by some action short of arrest and criminal prosecution. He might have tried to persuade the petitioners to leave the premises of their own volition, or to convince the management that making an arrest was in neither the public nor its private interest. Public officials might have sought to reason with the Park before making the police available. If the officer's only loyalty had been to the State, he would, at a minimum, we assume, have cast upon the proprietors the onus of directing petitioners to leave the premises instead of identifying the State's authority with the invidious discrimination by himself directing Negroes to leave an establishment open generally to the public.

3. When the sovereign power of a State is thus combined with the landowner's normal right to decide what licensees may enter his premises and the combined authority is thus exercised to maintain a policy of racial segregation, the State cannot disentangle itself from the discrimination. Having disclaimed the opportunity for independent judgment, the State cannot be heard to say—indeed, no one can know—what the State would have done had it retained that opportunity. In this case, the motivation for the exercise of State power was manifestly the Park's motivation. Since the Park was discriminating on grounds of race, State power was being used for reasons of race, directly and immediately, without other intervention. The order to leave the Park addressed to petitioners by the deputized officer cannot be separated from his employer's direction to give the order. The arrest

cannot be divorced from the direction to arrest. The racial motive for the direction to leave cannot be divorced from the motive for the direction to arrest. And nothing is clearer than that the exercise of State power on grounds of race or color is a denial of the equal protection of the laws.

Respectfully submitted.

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